

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 706.

ESSGEE COMPANY OF CHINA AND DAVID SCHRATTER,
PLAINTIFFS IN ERROR AND APPELLANTS,

v.

THE UNITED STATES OF AMERICA.

IN ERROR TO AND APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 12, 1922.

(29,256)

1

Index.

	Page
Citation	1
Final Order	2
Assignment of Errors	4
Petition for Writ of Error	7
Writ of Error	10
Petition of Appeal	12
Order to Show Cause	14
Petition of Essgee Company of China	16
Affidavit of David Schratter	24
Affidavit of Nathaniel H. Kramer	29
Affidavit of Dorothy Karas	34
Affidavit of Morris Schratter	37
Opposing Affidavit of Francis A. McGurk	39
Opposing Affidavit of John M. Williams	43
Opposing Affidavit of Edward R. Norwood	51
Opposing Affidavit of Frank Dow	53
Subpoena Dueas Tecum	55
Replying Affidavit of David Schratter	59
Replying Affidavit of Nathaniel H. Kramer	64
Replying Affidavit of Morris Schratter	67
Replying Affidavit of Dorothy Karas	69
Replying Affidavit of John M. Williams	71
Replying Affidavit of Edward R. Norwood	74
Replying Affidavit of Francis A. McGurk	77
Further Affidavit of Nathaniel H. Kramer	81
Further Affidavit of David Schratter	84
Opinion and Decision by Knox, J.	89
Stipulation	96
Stipulation on Appeal Record	98
Clerk's Certificate	99



Citation.**United States of America, ss:**

To Honorable William Hayward, United States Attorney in and for the Southern District of New York, GREETING:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States in Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the District Court of the United States in and for the Southern District of New York, wherein Essgee Company of China and David Schratter are plaintiffs-in-error, and the United States of America is defendant-in-error, and also pursuant to an appeal allowed in a certain proceeding wherein Essgee Company of China and David Schratter are plaintiffs-in-error, and United States of America is defendant-in-error, to show cause, if any there be, why the order, decree and judgment rendered against the said plaintiffs-in-error, as in said writ of error and in the petition of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

2

3

WITNESS the Honorable Martin T. Manton, Circuit Judge of the United States for the Second Circuit, this 15th day of September, 1922.

MANTON,
U. S. C. Judge.

4

Final Order.

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Courts and Post Office Building in the Borough of Manhattan, City of New York, on September 12, 1922.

Present: Hon. John C. Knox,
United States District Judge.

IN THE MATTER

5

of

The Application of ESSGEE COMPANY of China, and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

6

This application having duly come on to be heard before this Court on July 10, 1922, and after reading and filing the order to show cause herein dated June 27, 1922; the petition of Essgee Company of China, verified June 27, 1922; the affidavit of David Schratter, verified June 27, 1922; the affidavit of Nathaniel H. Kramer, verified June 27, 1922; the affidavit of Dorothy Karas, verified June 27, 1922; the affidavit of Morris Schratter, verified June 27, 1922, thereto annexed; the affidavits of David Schratter, verified July 10, 1922, and July 20, 1922; the affidavits of Nathaniel H. Kramer, verified July 10, 1922, and July 22, 1922; the affidavit of Morris Schratter, verified July 10, 1922; and the affidavit of Dorothy Karas, verified July 10, 1922; all submitted

in support of the motion; and the affidavits of John M. Williams, verified July 7, 1922, and July 18, 1922; the affidavits of Edward R. Norwood, verified July 7, 1922 and July 18, 1922; the affidavits of Francis A. McGurk, verified July 10th, 1922 and July 18, 1922, and the affidavit of Frank Dow, verified July 7, 1922, all submitted in opposition to said motion; and after hearing Hon. W. M. K. Olcott, of counsel, for the motion, and Francis A. McGurk, Assistant United States Attorney for the Southern District of New York, of counsel, in opposition thereto, and after filing the opinion of the Court,

Now, on motion of William Hayward, United States Attorney for the Southern District of New York, it is

Ordered, that said motion be, and the same hereby is, in all respects denied.

JNO. C. KNOX,
United States District Judge.

See memorandum endorsed on order entered in the application of Hanclaire Trading Corporation and David Schratter, dated September 12, 1922.

Sept. 12, 1922.

JNO. C. KNOX.

9

10

Assignment of Errors.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

11 The Application of ESSGEE COMPANY of China, and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

12 The above-named Essgee Company of China and David Schratter having appealed to the Supreme Court of the United States from the judgment and decree and order of this Court entered on the 12th day of Sept., 1922, denying their application for an order to compel the United States Attorney in and for the Southern District of New York to surrender possession to them of books, records and papers in his possession and belonging to them or either of them, make the following assignments of error:

FIRST: The District Court of the United States in and for the Southern District of New York erred in denying the petition of the said Essgee Company of China and David Schratter for an order directing the United States Attorney in and for the Southern District of New York to surrender to them possession of books, records and papers belonging to them or taken from them.

13

SECOND: The District Court of the United States erred in deciding that Essgee Company of China and David Schratter waived their right to obtain possession of books, records and papers taken from them, or either of them, by their delay in applying for an order to return to them their books, records and papers from October 14th, 1921, until June 27th, 1922.

14

THIRD: The District Court of the United States erred in deciding that Essgee Company of China and David Schratter waived their constitutional guarantee against unreasonable search and seizure by waiting until June 27th, 1922, before they made the application to compel the return of their books, papers and records.

15

FOURTH: The District Court of the United States erred in deciding that to permit the United States Attorney in and for the Southern District of New York to have, retain and use against Essgee Company of China and David Schratter their books, records and papers, would not be a violation of the right assured to them by the 4th and 5th amendments to the Constitution of the United States which protect them and each of them against unreasonable search and seizure of their said books, records and papers, and also against being compelled to be witnesses against themselves in a criminal cause.

FIFTH: That the District Court of the United States erred in deciding that the use by the United States Attorney before the Grand Jury of the United States of the books, records and papers which were taken from Essgee Company of China and David Schratter in connection with and as a basis of the indictment returned against them, was not a violation of the right assured to Essgee Company of China and

16 David Schratter by the 4th and 5th Amendments to the Constitution of the United States which protect them against unreasonable search and seizure of their books, records and papers, and also against being compelled to be witnesses against themselves in a criminal cause.

17 SIXTH: The District Court of the United States erred in determining and deciding that the rights guaranteed to Essgee Company of China and David Schratter under the 4th and 5th Amendments to the Constitution of the United States were not violated by the taking by the United States Attorney in and for the Southern District of New York of the books, records and papers which belonged to and were the property of Essgee Company of China and David Schratter.

18 SEVENTH: The District Court of the United States erred in its refusal to find and decide and determine that the taking of the books, records and papers, fully described in the original petition of Essgee Company of China and David Schratter, constituted an unreasonable search and seizure of the said books, records and papers and that the said taking of said books, records and papers was in violation of the rights assured to Essgee Company of China and David Schratter by the 4th and 5th amendments to the Constitution of the United States.

Dated, Sept. 14, 1922.

A. A. SILBERBERG,
Solicitor for Essgee Company
of China and David Schratter,
Office & P. O. Address,
No. 256 Broadway,
Manhattan, New York City.

Petition for Writ of Error.

19

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

20

Essgee Company of China and David Schatter, as plaintiffs-in-error, respectfully show:

That they made application to the United States District Court in and for the Southern District of New York for an order and decree directing the United States Attorney in and for the Southern District of New York to deliver to them and to surrender to them possession and custody of certain books, records and papers which were taken from them during October, 1921. That it was the claim and is the claim of Essgee Company of China and David Schratter that certain books, records and papers belonging to them were taken by the United States Attorney and are now held by him without their consent and that the United States Attorney has used the books, records and papers, so taken from them or at least some of them, before the Grand Jury in support of and as a basis for the indictment which

21

22 was returned by the Grand Jury sitting in the United States District Court in and for the Southern District of New York against the plaintiffs-in-error. That the said United States Attorney further intends to use the books, records and papers belonging to the plaintiffs-in-error and so taken from them without their consent or permission, upon the trial of the indictment now outstanding against the plaintiffs-in-error.

That the application upon the petition of the plaintiffs-in-error to compel the said United States Attorney to surrender to the plaintiffs-in-error possession of their said books, records and papers was heard by 23 this Court and denied. That the final order, judgment and decree in the proceedings which the plaintiffs-in-error instituted upon their said application is dated September 12, 1922. That the application made by the plaintiffs-in-error to compel the said United States Attorney to give up and surrender to the plaintiffs-in-error their said books, papers and records was based upon the claim that the taking and use by the United States Attorney in and for the Southern District of New York of the said books, records and papers was in violation of the rights and prerogatives of the said Essgee Company of China and David Schratter, plaintiffs-in-error, as guaranteed to them by the Constitution of the United States and the 4th and 5th amendments thereof.

That the plaintiffs-in-error have claimed and now claim that the taking or the use of their said books, records and papers, without their permission and consent, was and constituted an unreasonable search and seizure of their papers and effects which belonged to them, the plaintiffs-in-error, and that the plaintiffs-in-error were by reason of the use of the said books, records and papers before the Grand Jury as a basis

of an indictment against them, compelled in a criminal cause to be witnesses against themselves. 25

That the application which the plaintiffs-in-error made involved the construction and application of the Constitution of the United States and a part and portion thereof.

That Essgee Company of China and David Schratter feel aggrieved by the order and decree dated the 12th day of September, 1922, and submit that the matter is one proper to be reviewed by the Supreme Court of the United States upon writ of error.

Essgee Company of China and David Schratter do now pray that a writ of error be allowed them herein directing the Clerk of the United States District Court in and for the Southern District of New York to send the record and the proceedings herein with all things concerning the same to the Supreme Court of the United States in order that the errors complained of in the assignments of error, herewith filed by the plaintiffs-in-error above named, may be reviewed, and if error found, corrected according to the laws and customs of the United States. 26

Dated, New York, September 14, 1922.

ESSGEE COMPANY OF CHINA and
DAVID SCHRATTER,

Plaintiffs-in-Error.

By A. A. SILBERBERG, 27
Solicitor for Plaintiffs-in-Error,
No. 256 Broadway,
Borough of Manhattan,
New York City.

The foregoing petition is granted and a writ of error allowed as prayed for and the proceedings of the United States Attorney in and for the Southern District of New York in the case wherein United

28 States of America is plaintiff, and Essgee Company of China and David Schratter and another are defendants is hereby continued, a bond and undertaking in the sum of \$250 having been filed with the Clerk of this court.

MANTON,
U. S. Circuit Judge.

Writ of Error.

UNITED STATES DISTRICT COURT,

29

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

30

THE PRESIDENT OF THE UNITED STATES TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK:

Because in the record and proceedings as also in the entry of an order, judgment and decree entitled in these proceedings, dated the 12th day of September, 1922, between Essgee Company of China and David

Schratter, plaintiffs-in-error, and United States of America, defendant-in-error, manifest error is alleged to the great damage of the plaintiffs-in-error, and willing that error, if any there be, should be duly corrected and full and speedy justice done, do command you that you send the record and proceedings herein with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct the errors assigned.

32

WITNESS, the Honorable William H. Taft,
Chief Justice of the United States, the
15th day of September, 1922.

The foregoing writ is hereby allowed.

MANTON,
U. S. C. Judge.

Alex Gilchrist, Jr.,
Clerk, United States District Court.

33

34

Petition to Appeal and Allowance.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

35

36

Essgee Company of China and David Schratter feeling aggrieved by the order, decree and judgment of this Court dated September 12, 1922, signed by the Honorable John C. Knox, District Judge, and entered in the office of the Clerk of this Court, come now, by A. A. Silberberg, their solicitor, and hereby appeal from said order, judgment and decree to the Supreme Court of the United States and petition this Court for an order allowing the said Essgee Company of China and David Schratter to prosecute their said appeal at the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and that a transcript of the record and the proceedings and papers upon which the said order, judgment and decree was made, duly authenticated, may be sent to the said Supreme Court of the United States, and also that an order be made fixing the amount of security the

37
said Essgee Company of China and David Schratter shall give and furnish upon said appeal, and that upon the giving of said security and undertaking all proceedings on behalf of the United States Attorney in and for the Southern District of New York in a cause now pending wherein the United States of America is plaintiff and Essgee Company of China and David Schratter are defendants, be suspended and stayed until the determination of the said appeal by the Supreme Court of the United States, or until the further order of the Court in the premises.

And your petitioners will ever pray.

A. A. SILBERBERG,

Solicitor for Essgee Company of China
and David Schratter.

38

The foregoing appeal, as prayed for, is hereby allowed upon the appellants Essgee Company of China and David Schratter filing a bond for \$250, securing the costs of the United States and all proceedings of the United States Attorney in and for the Southern District of New York in the cause now pending in the United States District Court in the Southern District of New York, wherein United States of America is plaintiff and Essgee Company of China and David Schratter and another are defendants, be and the same are hereby suspended and stayed until after the determination and decision by the Supreme Court of the United States of the appeal from the above-mentioned order, judgment and decree.

39

Dated, New York, September 15, 1922.

MANTON,
U. S. C. Judge.

Order to Show Cause.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY of China, and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

41

Upon the annexed petition of Essgee Company of China, the affidavit of David Schratter, the affidavit of Nathaniel H. Kramer, the affidavit of Morris Schratter, and the affidavit of Dorothy Karas.

I direct that William Hayward, Esq., United States Attorney in and for the Southern District of New York, to show cause before this Court at a Stated Term thereof, to be held at the Court House in the Federal Building, in the Borough of Manhattan, City of New York on June 29th, 1922, at 10:30 A. M. of said day or as soon thereafter as counsel can be heard why the prayer of the petitioner above mentioned as made in these proceedings should not be granted, and why the order should not be made forthwith directing the said United States Attorney in and for the Southern District of New York to surrender and return to Essgee Company of China and to David Schratter, all the books, records, papers, letters, cables and memo-

42

randa set forth and referred to and mentioned in the annexed petition and affidavits, and which said books, records and papers were taken from said David Schratter and Essgee Company of China in the manner and under the circumstances set forth in the annexed papers.

43

Let service of a copy of the annexed petition and affidavits on the United States Attorney in and for the Southern District of New York on or before June 28th, 1922, be deemed sufficient.

Dated, New York, June 27th, 1922.

J. M. MAYER,
U. S. C. I.

44

45

46

Petition of Essgee Co. of China.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY of China, and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

47

The petition of Essgee Company of China respectfully shows to this Court:

- I. That your petitioner is a corporation organized under the laws of the State of New York, and had at the times hereinafter mentioned its principal place of business at 621 Broadway, in the Borough of Manhattan, in the City and County of New York.
- II. That Essgee Company of China is a citizen of the State of New York and is one of the defendants in this cause.
- III. That your petitioner is named as a defendant in an indictment which has been returned by the Grand Jurors for the United States in and for the Southern District of New York and empaneled during the month of May, 1922. The said indictment contains five separate counts. In each of said counts, which are included in the indictment aforesaid, this

48

petitioner is charged with entering and introducing into the commerce of the United States certain imported merchandise upon a valuation which is claimed to have been false and fraudulent.

49

IV. That the said indictment and each of the counts therein were predicated upon certain evidence and certain statements and records presented by the United States Attorney before the grand jurors, who returned and filed the said indictment, and that the records, papers and invoices which were so presented to said grand jurors as a basis of the said indictment, including books of this petitioner, were taken from this petitioner and its possession without due process of law and without its consent and contrary to the laws of the United States.

50

V. That this petitioner was, for some time prior to October 14th, 1921, and up to that time engaged in business in the City of New York and had its place of business in rooms 523 and 517 in the building known as 621 Broadway, in the Borough of Manhattan, City of New York, within the Southern District of New York. The petitioner did not do an interstate business, nor was it engaged in interstate commerce and that the petitioner's corporate existence was governed by the laws of the State of New York, the state under which its charter was obtained and granted.

51

VI. That petitioner so continued its business, which consisted of selling and dealing in straw goods and straw braids and other merchandise up to October 14th, 1921. On that day four persons representing themselves to be officers of the United States Government entered the petitioner's place of business at the office and address above mentioned, and under the circumstances following, took from the petitioner and

52 its officials and representatives all its books of account, minute book, invoices, records, papers and memoranda, without lawful process and contrary to the provisions of law and particularly in violation of the guarantees contained and set forth in the Constitution of the United States and the 4th Amendment thereof, and that the said books, records, papers, invoices and memoranda were so used against this petitioner without its consent after the same were so unlawfully seized, as herein detailed, in violation of the Constitution of the United States and the 5th Amendment thereof.

53 VII. The details and circumstances of the taking of the papers, books, records, invoices and memoranda from this petitioner are as follows:

"On October 14th, 1921, four men representing themselves to be officials of the United States Government came into the place of business of this petitioner and asked for Mr. Kramer and also for the codefendant David Schratter. That one of the four men then served Mr. Nathaniel H. Kramer (who was not an officer of this petitioner) with a subpoena *duces tecum* in a proceeding against Hanelaire Trading Corporation and not this petitioner, to attend before the grand jury on the same day in the United States District Court in the Southern District of New York.

54 "That Mr. Nathaniel H. Kramer did then and in response to and in keeping with said subpoena collect a bundle of papers, consisting of books of account, minute book, invoices, papers and memoranda and packed the same into a bundle, and he with two of the four officials who came to petitioner's office, as above stated, and the codefendant, David Schratter, went to the Federal Building in the Borough of Manhattan, in the City of New York.

"That when Mr. Kramer arrived at the Federal Building he was escorted to the anteroom where the grand jurors were sitting and was told that the Assistant United States Attorney wanted to talk to him and that his office was on the floor below (the fourth floor) in said building to which Mr. Kramer had then proceeded with the books, records and invoices and papers. One of the men who accompanied Mr. Kramer told him that he should leave the papers with one of the other two men who had come with Mr. Kramer, until Mr. Kramer had talked with the Assistant United States Attorney and had returned to attend before the grand jury.

55

"That Mr. Kramer left the papers in the anteroom adjoining the room where the grand jurors were then in session, and went to the private office of one of the Assistant United States Attorneys, and when he came into the office, Mr. Kramer was told that a warrant had been issued for the arrest of said Kramer and also for David Schratter, the co-defendant in this cause. The Assistant United States Attorney told Mr. Kramer to accompany him to the office of United States Commissioner Hitchcock, whose office was also in the Federal Building.

56

"That Mr. Kramer immediately demanded a return and surrender of all the papers which he had left in the anteroom adjoining the room in which the grand jurors were in session, and was told that the papers would not be surrendered or delivered or returned to him or to Essgee Company of China to whom the said books, papers and records belonged. Mr. Kramer then protested against the retention of the said books, records, papers and memoranda, but without avail. He was told that the said books, records, papers, invoices and memoranda would be submitted to the grand jury.

57

58 "That the said Nathaniel H. Kramer was then held to bail upon a warrant which had been issued for his arrest."

VIII. Petitioner verily believes that the books, records, invoices, papers and memoranda which were taken from Mr. Kramer in the manner outlined above were used before the grand jury in the consideration of the charges which are embraced and included in the indictment returned against this petitioner.

IX. Petitioner never consented to such use nor produced or surrendered voluntarily the said books, papers, records, invoices and memoranda. The aforesaid books, papers, records, memoranda and invoices were produced by Mr. Kramer pursuant to a subpoena *duces tecum* which was served upon him, although he was not an officer of this petitioner.

X. Before Mr. Kramer was called as a witness, or even asked, pursuant to the subpoena so served, to produce any of said papers and before this petitioner had an opportunity to either produce the said books, records, invoices and memoranda or refuse to produce them for any reason, the same were taken from Mr. Kramer under the circumstances above stated and set forth and the same were without authority withheld from said Kramer and this petitioner.

50 XI. In addition to the papers, books and records so taken from Mr. Kramer, petitioner submits that the other two men who came to petitioner's office on October 14th, 1921, as officials of the United States Government, remained at the office of this petitioner at 621 Broadway, in the Borough of Manhattan, City of New York, and raided the offices. These two officers who remained in petitioner's place of business ransacked the offices and desks and files of this peti-

tioner. They took from the desks and files, in the absence of Mr. Schratter, an officer of this petitioner, and a co-defendant, and in the absence of Mr. Kramer, a quantity of books, papers, invoices, records, files, correspondence and cables.

61

XII. The only persons who were in the offices of this petitioner at the time when the government officials raided the petitioner's place of business and took from its offices books, papers and records, were petitioner's bookkeeper (a young girl) and one, Morris Schratter, an uncle of the co-defendant.

XIII. The books, papers, invoices, files, correspondence and cables which were taken by the officials in the absence of petitioner's officers, were, petitioner charges, delivered to the United States Attorney in and for the Southern District of New York.

62

XIV. Petitioner is unable to state in detail the papers taken. Petitioner, however, charges the fact to be that among and included in the papers taken are the following:

General ledgers, customers ledgers, invoices for merchandise purchased by petitioner, invoices for merchandise shipped to petitioner, letters and cables which passed between petitioner and persons and concerns with which it dealt prior to October, 1921.

63

XV. The papers, books, records, letters, invoices and cables, taken by the government officials from the place of business of this petitioner during the absence of petitioner's officers, together with the papers which were taken from Mr. Kramer under the circumstances above stated and set forth, constitute all the books, records, papers, invoices, letters and cables which petitioner had in its business and in connection with the matters and transactions alleged and set forth in the

54 indictment returned by the Grand Jurors, above mentioned and set forth.

XVI. The United States Attorney for the Southern District of New York refuses to return any of the said books, records, invoices, letters, cables and papers. All of the said things and property are now unlawfully and improperly held by the United States Attorney. They were seized unlawfully and they were also, petitioner charges the fact to be, used by the United States Attorney in the examination of the matters, things and charges alleged and set forth in the indictment which has been returned against this petitioner.

55 XVII. The seizure and taking of the said books, records, invoices, letters, cables, papers and other memoranda was without due process of law and in violation of the protection against unlawful seizure as afforded to this petitioner by the Constitution of the United States and the 4th Amendment thereof, and the use of the said books, records, invoices, letters, cables and papers, and any of them by the United States Attorney before the Grand Jurors, who returned the indictment, and the consideration of the same in connection with the charges contained and set forth in said indictment by the said Grand Jurors, was in violation of the rights of this petitioner as the same are guaranteed by the 5th Amendment of the Constitution of the United States.

XVIII. This petitioner verily believes that the United States Attorney purposes to use and to make further use of the said books, records, invoices, letters, cables, papers and memoranda upon the trial of this cause. Such use will further violate the rights of this petitioner as the same are preserved to it under the Constitution of the United States and the 4th and 5th Amendments thereto.

Wherefore, your petitioner prays that the United States Attorney in and for the Southern District of New York, and all persons acting under him as well as all persons in whose possession the books, records, invoices, letters, cables, papers and memoranda belonging to this petitioner or addressed to this petitioner, may be directed by this Court to deliver the same and all of them forthwith to this petitioner.

67

And this petitioner will ever so pray.

Dated, New York, June 27, 1922.

ESSGEE COMPANY OF CHINA

By DAVID SCHRATTER,

President.

State of New York,

68

County of New York, ss:

David Schratter, being duly sworn, deposes and says: That he is the president of Essgee Company of China, the corporation mentioned herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

The reason why this verification is made by deponent is that he is an officer, to wit, the president of Essgee Company of China, which is a domestic corporation, and is familiar with the facts and circumstances herein.

69

The sources of deponent's information and grounds of his belief as to all matters not therein stated upon his knowledge are as follows: Books, papers, records and correspondence belonging to said Essgee Company of China.

DAVID SCHRATTER.

Sworn to before me this

27 day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co., No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

70

Affidavit of David Schratter.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

State of New York,
County of New York, ss:

David Schratter, being duly sworn, deposes and says: That he is a citizen of the United States of America and is a resident of the City of New York, in the State of New York.

That deponent was on October 14th, 1921, and now is the president of Essgee Company of China. Deponent joins in the application which Essgee Company of China is making for a return of books, papers, records, letters, cables, invoices and other memoranda taken from it under the circumstances set forth in the formal petition of said company and also makes this application on his own behalf as a defendant for the return of those papers and also a return of further individual papers hereinafter more fully detailed and set forth, which were, in addition to the papers of Essgee Company of China, taken from this de-

72

ponent without lawful process and without right in law and in violation of the guarantee against unlawful seizure as the same is safeguarded to deponent by the Constitution of the United States and the 4th and 5th amendments thereto.

73

On October 14th, 1921, and for some time prior thereto deponent was engaged in business individually and also as president of Essgee Company of China, a co-defendant in the indictment heretofore returned and made his offices at the offices of Essgee Company of China, in Rooms 523 and 517 of 621 Broadway, Manhattan Borough, New York City. Deponent kept his personal books, records, papers, letters, documents, invoices and memoranda relating to his individual business and also relating to transactions and business in which Essgee Company of China and deponent were interested, in the offices above mentioned.

74

During the morning of October 14th, 1921, four men came into Room 523 in said building. Deponent was present at the time. Mr. Nathaniel H. Kramer was present; Mr. Morris Schratter, who was working for deponent and Essgee Company of China, and Dorothy Karas, bookkeeper, were also present.

The details of what happened and the only paper served, viz, a subpoena, are fully set forth in the petition of Essgee Company of China, and for brevity deponent does not reiterate the same. Deponent, however, adopts and fully reaffirms everything contained in the petition of Essgee Company of China relating to the circumstances under which the books, papers, records, invoices and memoranda belonging to Essgee Company of China were taken and ultimately seized by the United States Attorney. In addition to the books, records and papers and other things of Essgee Company of China the two men who were left behind after deponent and Mr. Kramer went before the

75

76 Grand Jury, took deponent's individual papers, records, letters, invoices and other memoranda. These also deponent verily believes were delivered to the United States Attorney and were by him, as deponent verily believes, used before the Grand Jurors who heard and who returned the indictment containing the charges involved in this cause.

As soon as deponent arrived in the Federal Building in the City of New York on October 14th, 1921, deponent was taken by the two government officers to a room which adjoined the room where the Grand Jurors were in session. Deponent was not called as a witness but was told that one of the Assistant United States Attorneys wanted to see him. Deponent accompanied one of the men to the office of one of the United States Attorneys and deponent was there for the first time served with a warrant for deponent's arrest.

77 Mr. Kramer was also arrested at the same time. Deponent was then placed under arrest and brought for arraignment before the United States Commissioner. Deponent was held to bail which was duly given and furnished.

Prior to October 14th, 1921, which was on a Friday, I had arranged passage for Europe and I obtained leave of the Court to leave for Europe the following day (October 15th, 1921). I remained abroad in connection with business matters until June 9th, 1922. While in Europe I learned that I had been indicted jointly with the Essgee Company of China upon the charge that I and the Essgee Company of China violated the laws of the United States relating to introducing into the commerce of the United States goods contrary to the provisions of law. I pleaded not guilty to the charges contained in the indictment on June 12th, 1922, and also entered a plea on behalf of the Essgee Company of China on June 19th, 1922, of not guilty.

I have learned from the employees of Essgee Company of China the details of what the two officers who remained in the place of business of the defendant company did. Their affidavits are submitted herewith. All of the books, records, papers, invoices, correspondence and memoranda belonging to both of the defendants have been delivered to the United States Attorney. Deponent charges the fact to be that the United States Attorney for the Southern District of New York now has the same in his possession and that the said books, papers, records, invoices, letters, cables and memoranda belonging to the defendants and each of them or either of them, obtained in the manner outlined in the annexed petition and other affidavits, were used by the United States Attorney in the submission of the charge embraced within the indictment before the Grand Jurors who returned the said indictment.

Deponent is unable to give a detailed list of the papers, books and records which belonged to this deponent, nor those which belonged to the defendant company. Deponent, however, maintains and charges that all of the books which consist of general ledgers, customers' ledgers, minute book, invoices for merchandise shipped to deponent or to the defendant company, letters and cables which passed between deponent and certain individuals and firms in European countries, or which passed between the defendants and others in foreign countries, were all obtained illegally and were used as a means of incriminating deponent and the defendant company. The United States Attorney in and for the Southern District of New York now holds all of the foregoing books, papers, records, invoices, letters and cables illegally and has refused to return the same.

Deponent verily believes that the United States attorney purposes to use the books, papers, records, files,

79

80

81

82 correspondence and cables, so seized as above and in the annexed petition and affidavits set forth, upon the trial of the charges enumerated and set forth in the indictment returned as above stated, and that by reason of the premises and by reason of all the facts set forth and stated in the papers submitted herewith, the rights of deponent and the rights of defendant company, as guaranteed to them and to each of them under the Constitution of the United States and the 5th and 4th amendments thereto, have been violated.

Wherefore, your deponent prays that the United States Attorney and all persons acting under him, who may have any of the books, records, papers,

83 correspondence, letters, cables and invoices belonging to this deponent or to the Essgee Company of China, return the same.

DAVID SCHRATTER.

Sworn to before me this

27th day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co., No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

Affidavit of Nathaniel H. Kramer.

85

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

86

City & County of New York, ss:

Nathaniel H. Kramer, being duly sworn, deposes and says: That in October, 1921, he was employed by Hanclaire Trading Corporation. Deponent was so employed on October 14, 1921, and was then an officer, to wit, the vice president of the Hanclaire Trading Corporation. Deponent was on October 14, 1921, neither an officer or director of Essgee Company of China.

87

During the morning of October 14, 1921, four men entered the office of Essgee Company of China in the building known as 621 Broadway, Manhattan Borough, New York City. One of the four asked for deponent and Mr. David Schratter. Deponent was in the office at the time and was told by the spokesman for the four men that they were United States Government officers. Deponent was then served with a subpoena by the same man in a proceeding entitled

88 against Hanclaire Trading Corporation. This last-named corporation and Essgee Company of China had offices together in the building above mentioned. The subpoena as deponent recalls it, directed the Hanclaire Trading Corporation to produce all its books, papers and records forthwith before the Grand Jury. Deponent collected a large bundle of papers consisting of some of the books, invoices and other papers belonging to the Hanclaire Trading Corporation, and personally took the same and with Mr. Schratter and two of the four men, left the office for the Federal Building in the Borough of Manhattan, City of New York. When deponent and Mr. Schratter reached the Federal Building, the two men who represented themselves

89 as government officers, went to the anteroom adjoining the room where the Grand Jurors were then in session. Deponent was not called as a witness pursuant to the subpoena, instead one of the men told deponent that he and Mr. Schratter were wanted by one of the Assistant United States Attorneys, whose office was on the third floor of the Federal Building. Deponent and Mr. Schratter were then in the above-mentioned anteroom on the fourth floor of the Federal Building.

90 Deponent had in his personal possession, all the papers which he had taken from the office, and one of the men requested deponent to hand the bundle of papers to one of the other officers to hold for him until he returned from the office of the Assistant United States Attorney. Deponent and Mr. Schratter proceeded to the office of one of the United States Attorneys, and he was introduced by one of the two men who were at the office of the Essgee Company of China. Deponent was then immediately told by the Assistant United States Attorney that he should go before the United States Commissioner Hitchcock, and

on arriving at the latter's office was told there was a warrant for the arrest of deponent and Mr. David Schratter. The warrant was then served upon deponent and Mr. Schratter and they were declared to be under arrest. Deponent wanted to go back for the papers to the anteroom adjoining the Grand Jury, but was instead ordered to go for arraignment before United States Commissioner Hitchcock in the Federal Building. There the Commissioner held an arraignment of deponent and Mr. Schratter and deponent and Mr. Schratter were held to bail, and the bail was duly furnished.

Deponent finally did go back to the anteroom to demand the return of the papers which he had handed to one of the United States officers, and was told that he could not have these papers. Deponent was also then told that the papers would be used before the Grand Jury in due course. Deponent insisted that the papers belong to the Hanclaire Trading Corporation, and deponent as its officer was entitled to the possession of the papers. Return was absolutely denied to him.

After bail was furnished by deponent he went back to the office of the Essgee Company of China, and also Hanclaire Trading Corporation, and deponent was informed at the office that two of the four men remained behind after deponent and Mr. Schratter went to attend before the Grand Jury in obedience to the subpoena which had been served, and ransacked all the papers and records of Essgee Company of China, and also Hanclaire Trading Corporation, and had taken from the office two large bundles of books, papers, records, invoices and other memoranda as well as letters and cables belonging to both of the corporations named. No search warrant nor warrant or process of any kind was served upon deponent or Mr. Schratter

94 or any officer of either the Essgee Company of China or the Hanclaire Trading Corporation for any of said papers or books, except the subpoena which directed the appearance of deponent before the Grand Jury with the books, papers and records of Hanclaire Trading Corporation. The Essgee Company of China was not even mentioned in the subpoena. The only party mentioned was the Hanclaire Trading Corporation. Deponent waived an examination upon the warrant under which he was taken into custody. No examination has ever been held. Instead the United States Attorney proceeded with the examination of charges against Essgee Company of China, Hanclaire Trading Corporation and David Schratter before the Grand

95 Jury. Deponent believed that he also was included in the charge which the United States Attorney was presenting to the Grand Jury. Deponent asked the privilege to testify before the Grand Jury. He was accorded that privilege, and the Grand Jury did not include deponent in either the indictment against Essgee Company of China or in the indictment in the cause against Hanclaire Trading Corporation and David Schratter.

96 Mr. David Schratter left for Europe on the morning of the 15th of October, 1921, and he returned about June 9th, 1922. Deponent has been told that the papers which were taken from this deponent belonging to Hanclaire Trading Corporation, and also the papers which were taken by the officers belonging to the Essgee Company of China, and also Hanclaire Trading Corporation, including the books, records, invoices, letters and cables of both of said corporations, were used by the United States Attorney in the presentation of the charge as the same was included in the indictment herein or in the indictment against Hanclaire Trading Corporation and David Schratter. Many of the papers taken, deponent was

informed were the personal papers and records and memoranda of David Schratter. Deponent is not now in a position to itemize or specify the particular books, records, papers, letters or cables which were taken from deponent or by the officers in the absence of deponent and Mr. Schratter from the place of business of Essgee Company of China and Hanclaire Trading Corporation, but in a general way knows that the books, papers, and records included the ledgers, minute book, invoices, letters and cables. The fact is that both Essgee Company of China and Hanclaire Trading Corporation were stripped of all their records, papers, files, letters and cables, and their files left empty. All of these papers, records and books were taken under the circumstances outlined and set forth above.

NATHANIEL H. KRAMER.

Sworn to before me this

27th day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co., No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

100

Affidavit of Dorothy Karas.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the

101 United States Attorney for the Southern District of New York to return all books, papers, records, etc.

State of New York,
County of New York, ss:

Dorothy Karas, being duly sworn, deposes and says: On October 14th, 1921, I was employed by Essgee Company of China as a bookkeeper and general filing and office clerk. I did my work at the offices of Essgee Company of China at 621 Broadway, Manhattan Borough, New York City, in Rooms 523 and 517 of that building. I had general charge of the books of Essgee Company of China and also general charge of the records, files, correspondence, cables and invoices of said Essgee Company of China.

102 I remember that during the forenoon of Friday, October 14th, 1921, four men came to the offices of Essgee Company of China in Room 523. Mr. David Schratter, the president of Essgee Company of China and a co-defendant in the indictment heretofore re-

turned, and Mr. Nathaniel H. Kramer were both present. Mr. Morris Schratter and I were also present. One of the four men then stated that they were United States officials and that they had been sent by the United States Attorney and wanted Mr. Schratter and Mr. Kramer to come down to the Post Office Building where the United States Attorney had his office, and to take with them certain papers, the details of which I do not now remember. Mr. Schratter and Mr. Nathaniel H. Kramer left with two of the four men a few minutes later. The other two men remained in the office and without talking to deponent or to Mr. Morris Schratter, who remained in the office, took together the books, records, letters, files, invoices, correspondence and cables of Essgee Company of China. They went through all the papers and examined them. They did not ask deponent nor Mr. Morris Schratter (the only two people who were left at the office) for permission. I was thoroughly frightened and said nothing of objection or otherwise to what the two officers who remained were doing.

103

104

105

The two men who remained in the office after Mr. Nathaniel H. Kramer and Mr. David Schratter left, searched and examined every bit of record and paper and letter which Essgee Company of China had. They made and continued a thorough search and examination of all the records and papers of Essgee Company of China. They separated and set aside (and this I personally saw) a large number of invoices, cables, letters and memoranda. They also examined the general ledger and other books of Essgee Company of China. A large number of invoices, cables, letters, papers and books, as well as files, were set aside by the two men and they farther went into the adjoining room known as Room 517, and took together papers, books, records, invoices, letters and cables which were

106 contained in that room. Here in this room (Room 517) they also set aside a large quantity of invoices, letters, books, records and cables relating to the business of Essgee Company of China. They packed the books, papers, records, invoices, cables and memoranda into bundles and carried them away.

The papers and memoranda and letters which these two men left were few and of no importance. The two men remained in the offices about three hours and devoted themselves during that time to the examination and setting aside of the books, papers, records and invoices which were kept in the offices of Essgee Company of China.

107

DOROTHY KARAS.

Sworn to before me this

27th day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co., No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

108

Affidavit of Morris Schratter.

109

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

110

State of New York,
County of New York, ss:

Morris Schratter, being duly sworn, deposes and says: In October, 1921, I was employed as general assistant in the office of Essgee Company of China. I was present when four men came into the office of Essgee Company of China on October 14th, 1921, and remember what transpired at that time.

I have read the affidavit of Dorothy Karas, the bookkeeper and filing clerk, and reiterate her statements with the same force and effect as if the same were incorporated by me at length in this affidavit. I do not repeat the exact occurrences and statements contained in Miss Karas's affidavit because my recollection coincides fully with what Miss Karas says upon the subject. The facts detailed in the affidavit of Miss Karas are affirmed by me in detail.

111

112 I did at one point, while the two men who remained after Mr. Kramer and Mr. David Schratter left, ask them whether they had any warrant or order from the Court permitting them to take the papers. They told me that a paper had been served upon Mr. Kramer and that they were Government officers and had a perfect right to do what they were doing without any further papers.

The two men who remained after Mr. Kramer and Mr. David Schratter left the offices, carried off and took with them two large bundles of books, papers, records, memoranda, invoices and letters belonging to Essgee Company of China and also to Hanclaire Trading Corporation.

113 MORRIS SCHRATTER.

Sworn to before me this

27th day of June, 1922.

Alexander Lewis,

Notary Public,

Queens Co., No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Com. expires March 30, 1923.

114

Opposing Affidavit of Francis A. McGurk.

115

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

116

County of New York,
Southern District of New York, ss:

Francis A. McGurk, being duly sworn, says:

That he is an assistant to the United States Attorney for the Southern District of New York and has charge of this action.

Deponent has read over the moving affidavits submitted upon this application and is familiar therewith.

Upon information and belief deponent alleges that no subpoena *ad testificandum* was issued to any individual connected with any of the corporations involved in this proceeding, and that the only subpoenas issued were two subpoenas *duces tecum* addressed to the Hanelaire Trading Corporation and the ESSGEE Company of China, Inc., returnable before United States Grand Jury in this district on October 14, 1921, and to the original subpoenas deponent begs leave to refer to the arguments of this motion.

117

118 That Nathaniel Kramer was never subpoenaed or called by the Government as a witness, but said Kramer came to deponent on various occasions while the Grand Jury was investigating the cases out of which this application arises and literally implored deponent to permit him to appear before the Grand Jury, stating among other things that he was willing to waive immunity.

In the course of these interviews with deponent, said Kramer volunteered to become a witness for the Government in its pursuit of Schratter, Zadek, the Essgee Company of China, Inc., and the Hanclaire Trading Corporation.

119 While deponent was in the Grand Jury room presenting the case to the Grand Jury, he was frequently called therefrom by Louis S. Posner, who stated he was counsel to the two corporations involved, and said Posner entreated deponent to permit said Kramer or Schratter to appear before the Grand Jury. Deponent refused the request. Thereafter, said Posner by letter, made the same request directly to the foreman of the Grand Jury, a copy of which letter is annexed hereto, made part hereof and marked Exhibit "A."

120 Finally, in May, 1922, subsequent Grand Juries having continued the investigation begun in October, 1921, after repeated entreaty by said Kramer and Posner, Kramer was allowed to appear before the Grand Jury in his own behalf. On the occasion of his so appearing, said Kramer produced, voluntarily, various records and documents of the corporations and willingly presented them to the Grand Jury for their inspection, consideration and impounding. The records and documents then produced by Kramer had never been the subject of a subpoena nor any form of request from anyone connected with the office of the United States Attorney.

That no demand was ever made by said Schratter, Kramer or Posner, nor anybody, prior to making this application, for the return of the papers now detained, except that said Kramer did ask deponent to return certain documents that had been produced, which said Kramer stated were irrelevant to the issues involved, and thereupon all the papers, etc., were gone over, and deponent is informed by John M. Williams, whose affidavit is annexed, that the papers sought by Kramer were delivered to him.

That the sources of deponent's information and the grounds of his belief as to the matters herein stated to be alleged upon information and belief, are the records of this court and the records of the United States Attorney and the United States Marshal for the Southern District of New York.

That there is pending with this application a similar one made by the same individuals and by the Hamclaire Trading Corporation. That both applications arose out of the same facts and circumstances and deponent asks that the answering affidavits submitted on this application be deemed as answering the application of the Hamclaire Trading Corporation.

FRANCIS A. McGURK.

Sworn to before me this

10th day of July, 1922.

Carl Brecher,

Notary Public,

Kings Co.

Clerk's No. 496; Reg. No. 3178.

N. Y. Clerk's No. 317; Reg. No. 3340.

Com. expires March 30, 1923.

121

122

123

124

Exhibit "A."

LOUIS S. POSNER
 ATTORNEY AND COUNSELLOR AT LAW
 15 Broad Street, New York

October 14, 1921.

R. G. White, Esq.,
 Foreman Federal Grand Jury,
 Post Office Building,
 Park Place, New York City.

Dear Sir:

125 There is now in process of presentation to your body, the facts in an alleged violation of the law with respect to under-valuation of certain imports by the Hanclaire Trading Corporation, and more specifically, with reference to two of its officers, Messrs. Schratter and Kramer.

Mr. Kramer is a member of the Bar, in excellent standing, who only recently became identified with the company, and as such officer, cleared some of the merchandise in question. He feels confident, as do I, that he can readily clear himself of these charges, and also clear Mr. Schratter, if he may be permitted to appear before your body, and make an explanation of facts which otherwise might seem condemnatory.

126 An indictment would not only virtually ruin the business of the Hanclaire Trading Corporation, but would gravely, and perhaps permanently, reflect upon the career of Mr. Kramer, regardless of the ultimate outcome of the trial, and in his behalf, I respectfully make this request for permission to appear before you.

I have asked Mr. Kramer to attend at my office on Monday, the 17th inst., ready to respond immediately to any communication which may result from this letter.

I am Sir,

Very respectfully,

L. S. POSNER.

LSP-GR.

Opposing Affidavit of John M. Williams.

127

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York to return all books, papers, records, etc.

128

County of New York,
Southern District of New York, ss:

John M. Williams, being duly sworn, deposes and says, that he is acting deputy collector of customs of the port and collection district of New York and has read the moving affidavit on this application and is familiar with the contents thereof and the incidents referred to therein.

129

That on the 14th day of October, 1921, deponent in company with Edward R. Norwood, Frank Dow and Sigmund Neustadt, customs agents, proceeded to the offices of the Esggee Company of China and the Hanelaire Trading Corporation, located at 621 Broadway, in the Borough of Manhattan, City of New York.

On entering the offices of these companies, deponent with Customs Agent Norwood asked for Mr. Schratter. David Schratter produced himself and was there-

130 upon served with two subpoenas *duces tecum*, one running to the Essgee Company of China and the other to the Hanclaire Trading Corporation, each calling for the production of various records, pertaining to the purchase and entry of certain merchandise by both corporations during the period January 1, 1915, to October 14, 1921. That at the time these subpoenas were served on David Schratter, he was seated at a table in the offices above mentioned, and opposite him sat Nathaniel Kramer. After said Schratter read the subpoenas which had been served on him, he handed them across the table to said Kramer. Deponent, while talking with said Schratter, had in his hand

131 certain entries and invoices and copies of private invoices covering the importation of merchandise by the Hanclaire Trading Corporation and the Essgee Company of China into the United States in this district, which merchandise had been entered by both corporations. Deponent showed said Schratter the entries and the invoices attached thereto that he had with him and asked to see the "private invoices" that the corporations had, similar to the ones deponent showed said Schratter. Said Schratter replied that he would gladly show what they had. Deponent gave said Schratter the dates of five invoices with the marks and numbers of the packages covered by them and said Schratter called to a girl in the office to bring him all the invoices they had between the dates that deponent had just given him.

132 In response to said Schratter's request, the girl brought in a number of copies of consular invoices and said Schratter produced a number of similar copies from his desk. Deponent glanced at these copies of consular invoices and informed said Schratter that those were not what he wanted, stating that they had other "private invoices" in their possession

and that those were what was wanted. Said Schratter replied that the copies of consular invoices were all that they had. 133

During this conversation, deponent noticed lying on the table in front of said Schratter, some papers which appeared to be invoices, and he asked said Schratter if he would let deponent examine those papers. To the best of deponent's recollection, Schratter replied that those papers were nothing, but he did state that deponent might examine them. Deponent examined those papers and found that they were "private invoices" and that one of them covered a shipment which was also covered by one of the entries and invoices that deponent had in his hand, corresponding in all respects except as to the prices of the merchandise listed. The prices of the merchandise listed on the invoices that said Schratter had in his possession were higher than upon those attached to the entries in deponent's possession. At this juncture deponent told said Schratter that those were the bills that were wanted to be seen and if there was any more of them about, deponent would like to make an inspection of them. Said Schratter then said, "These are nothing at all. They don't mean anything." Deponent replied that he would like to see all of those kind of bills that the Essgee Company, the Hanelaire Trading Corporation and the Impex Trading Company had, if he had no objection. Said Schratter then said, "You can see everything we have." 134

At this juncture deponent noticed that a drawer in the table at which Mr. Schratter sat was open and lying therein there appeared some other invoices similar to the ones that were lying on the top of the table. Deponent remarked with respect to the invoices in the open drawer that they appeared to be 135

136 similar to the ones Schratter had just given him and stated to said Schratter that he would like to see the ones in the drawer also, as well as any more similar invoices that the corporations above mentioned had. Said Schratter said that he would show him everything and gave deponent the invoices that were in the drawer which were all made out to the Han-claire Trading Corporation. Said Schratter was then asked by deponent if he had any more of these invoices and said Schratter called the young lady in the office and gave her some instructions that deponent did not hear.

137 Deponent then called to the attention of said Schratter the subpoenaes that had just been served upon him, and stated to him that deponent and those who were with him did not wish to impose upon said Schratter or his corporations, unnecessary hardship by bringing down all the papers, books and documents that he had in the office, and stated that they would look over the papers and books of the corporations, called for in the subpoena, while they were on the premises, and select what of them would be of interest to the Grand Jury, if such plan was agreeable. Said Schratter replied that that was very nice of deponent and those with him and said he would be very glad to let deponent and those with him examine what they had. Deponent and those accompanying him selected what was desired, consisting of certain invoices, letters and books, which were put on one side, and at Schratter's direction, an employee wrapped them up in packages. Meantime a taxicab was summoned by said Schratter and the papers were taken to the taxicab by Messrs. Schratter and Kramer and they were accompanied to the United States Grand Jury in this United States Courts and Post Office Building by Customs Agents Norwood and Dow.

Before Messrs. Schratter and Kramer left the offices at 621 Broadway, deponent asked said Schratter where the books and papers of the Essgee Company and the Impex Trading Company were, and he said that they did not have them; that they were put away in an old safe and that he didn't know where the safe was just then. He further stated that whatever books and records they had and were not using in the office, were stored in an outside room. Deponent informed Mr. Schratter that he would be glad to inspect the books and records in the outside room if Mr. Schratter had no objection, whereupon Mr. Schratter gave instructions to a girl in the office to go with deponent and Customs Agent Neustadt into the outside room to examine the books and records there. In the presence of this lady, deponent and Customs Agent Neustadt examined these books and records but found nothing among them pertaining to the Essgee Company of China or the Impex Trading Company, nor did deponent or Customs Agent Neustadt remove anything from this outside room.

Before said Schratter left, deponent asked him about the files of correspondence of the Hanclaire Trading Corporation, the Essgee Company of China and the Impex Trading Company, and asked him if he wanted deponent and those accompanying him to look them over, and whether it would take any length of time. Messrs. Schratter and Kramer were then about to leave the office and Mr. Schratter called to the young lady in the office to let deponent and Customs Agent Neustadt look over all the correspondence they had in the office and to select therefrom and take away with them anything that they desired. Deponent and Customs Agent Neustadt looked over the files of correspondence produced by this young lady, at Mr. Schratter's direction, picked out some

139

140

141

142 of the correspondence and took it away with them to the United States Attorney's office. All of this correspondence, which has been impounded by the Grand Jury is the business correspondence of the corporations and is not personal correspondence of said Schratter or Kramer. Most of this correspondence deponent has since returned to Mr. Nathaniel Kramer, at his solicitation.

Deponent denies that any papers or documents were taken from the office at 621 Broadway, New York City, without the consent of David Schratter, and avers that said Schratter at the times hereinbefore mentioned, seemed disposed to accede to the wishes

143 of deponent.

Deponent denies that the offices at 621 Broadway, New York, were ransacked by deponent or Customs Agent Neustadt, who remained with deponent after the departure of Messrs. Schratter and Kramer to the United States Courts and Post Office Building. Deponent further states that both said Schratter and Kramer were informed before they departed their offices that deponent and said Neustadt would remain behind for the purposes hereinbefore mentioned, whereupon said Schratter enlisted the aid of one of his clerks to facilitate deponent in examining the records which said Schratter had theretofore disclosed, and the said clerk was present during all the times deponent and said Neustadt made the examination of the papers and files placed at their disposal by said Schratter.

So far from any abuses of power, or unlawful searches and seizures being made upon or in the offices aforesaid, or upon said Schratter, deponent annexes hereto and makes a part hereof and marks "Exhibit A," a copy of a letter received by deponent and written to him by Nathaniel Kramer, dated No-

ember 5, 1921, expressing the thanks of said Kramer for the fair and clean manner of the treatment accorded him by deponent.

That deponent has never been asked by anyone for the return of any of the papers produced by said Schratter and Kramer, with the exception of certain papers and documents hereinbefore mentioned, and which deponent did return.

Deponent has been informed at the New York Custom House that Customs Agent Neustadt is now abroad in Germany as a treasury attache, and has been for some time prior to the filing of the motion herein.

JOHN M. WILLIAMS. 145

Swore to before me this

7th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County,

Clerk's No. 499; Register's No. 3178.

N. Y. Clerk's No. 317; Reg's No. 3340.

Commission expires March 30, 1923.

145

146

147

148

"Exhibit A."

NATHANIEL H. KRAMER

ATTORNEY AT LAW

51 Chambers St.

New York

—
Tel. Worth 2882

Evening Tel. Orchard 3329

149

November 5, 1921.

Mr. Williams,
 Room 248, Post Office Bldg.,
 Broadway and Mail St.,
 New York City.

Dear Sir:

150

I take the liberty of enclosing herewith the case numbers of the merchandise in bond belonging to the Hanclaire Trading Corporation in reference to which I spoke to you during the week and which, for reasons stated by me to you, I would like to have cleared if the same is permissible and there is no legal objection to it or that the clearance of these goods will not in any way prejudice the Government's investigation in any manner.

I thank you for fair and clean manner in which I have been treated by you in this matter.

Very respectfully yours,
 NATHANIEL H. KRAMER.

NHK/AMH

Opposing Affidavit of Edward R. Norwood. 151

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

152

County of New York,
Southern District of New York, ss:

Edward R. Norwood, being duly sworn, deposes and says that he is a customs agent assigned to the Port of New York.

Deponent has read the affidavit of John M. Williams, submitted on this application, and is familiar with all the transactions set forth therein up to the time the said Schratter and the said Kramer left the offices at 621 Broadway, New York City, to come to the Federal Building, and deponent reaffirms and realleges everything set forth in the affidavit of the said Williams as though more fully and at length averred by deponent in this affidavit. Deponent accompanied the said Kramer and Schratter from the offices at 621 Broadway, New York City, to the Federal Building in New York City.

153

154 Deponent, on said October 14, 1921, was duly deputized by the United States Marshal for the Southern District of New York to serve two subpoenas *duces tecum* upon the Essgee Company of China and the Hanclaire Trading Corporation, and deponent proceeded to the offices of the said corporation, located at 621 Broadway, New York City, in company with John M. Williams and Customs Agents Dow and Neustadt, and there made inquiry for Mr. Schratter, who, upon producing and identifying himself, was served with both subpoenas. Deponent never served the said Kramer with any subpoena.

155 Upon the arrival of deponent and Customs Agent Dow at the Federal Building, in company with the said Kramer and the said Schratter, they came to the Grand Jury room and there the said Kramer and the said Schratter left the records they had brought with them.

Thereafter, deponent took the said Kramer and Schratter to the office of United States Commissioner Hitchcock, where they were placed under arrest upon a complaint made by deponent against the said Kramer and said Schratter, together with one Zadek.

156 At no time was deponent asked by either Kramer or Schratter to return the records brought by said Kramer and said Schratter to the Grand Jury, nor at any time did deponent or those with him ransack or burglarize or in any manner force the said Kramer and said Schratter to deliver to deponent or those accompanying him any records of the Hanclaire Trading Company, the Esgee Company of China, or any personal records of the said Schratter or the said Kramer. As stated in the affidavit of John M. Williams, the said Schratter and the said Kramer were

quite willing to show and to deliver to deponent and to those accompanying him, whatever was asked for.

E. R. NORWOOD.

157

Sworn to before me, this
7th day of July, 1922.

Carl Brecher,
Notary Public,
Kings County.

Clerk's No. 496; Register's No. 3178.
N. Y. Clerk's No. 317; Reg.'s No. 3340.
Commission expires March 30, 1923.

158

Opposing Affidavit of Frank Dow.
UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

159

County of New York,
Southern District of New York, ss:

Frank Dow, being duly sworn, deposes and says that he is a Customs Agent attached to the Collector of Customs for the Port of New York and is familiar with some of the transactions incident to this application.

160 On the 14th day of October, 1921, deponent, in company with Acting Deputy Collector of Customs John M. Williams and Customs Agents Neustadt and Norwood, proceeded to the office of the Hanclaire Trading Corporation and the Essgee Company of China, at 621 Broadway, Borough of Manhattan, in the City of New York, and was present when David Schratter produced the invoices mentioned in the affidavit of John M. Williams, submitted herewith. Deponent recalls that at first said Schratter denied that he had any other invoices besides the copies of the consular invoices mentioned in the affidavit of said Williams. Deponent recalls also that said Williams showed David Schratter a copy of an invoice which he had with him, and thereupon asked said Schratter to produce the invoices which corresponded to the one in his possession. Thereupon the true "private invoices" were produced by said Schratter.

161 Deponent was present when Schratter wrapped up in bundles, or caused to be wrapped up in bundles, the invoices and books that he produced at the request of said Williams, and deponent recollects distinctly that no seizure was made of any papers by deponent or any of those accompanying him, but that the papers so wrapped up as aforesaid were taken by David Schratter or one of the employees of his company, to the taxicab which was waiting downstairs, to convey them to the Post Office Building, and deponent and Customs Agent Norwood accompanied said Schratter and Kramer to the Post Office Building.

162 After the taxicab arrived at the Post Office Building, the documents were carried by either Schratter or Kramer to the Grand Jury room and there turned

over to the Assistant United States Attorney in charge **163**
of the case.

FRANK DOW.

Sworn to before me, this
7th day of July, 1922.

Carl Brecher,
Notary Public,
Kings County.

Clerk's No. 496; Register's No. 3178.
N. Y. Clerk's No. 317; Reg.'s No. 3340.
Commission expires March 30, 1922.

164

Subpoena duces tecum.

THE PRESIDENT OF THE UNITED STATES OF AMERICA
to: Essgee Company of China, Inc., 621 Broad-
way, New York, N. Y. GREETING:

WE COMMAND YOU, that all business and excuses
being laid aside you appear and attend before the
Grand Inquest of the Body of the People of the
United States of America for the Southern District
of New York, at a District Court to be held in Room
426 at the United States Court House and Post
Office Building, Borough of Manhattan, City of New
York, on the 14th day of October, 1921, at eleven
o'clock in the forenoon to testify and give evidence in
regard to an alleged violation of Section 3, paragraph
G, Act of October 3, 1913, and not to depart the
Court without leave thereof or of the District Attorney
and that you produce at the time and place afore-
said, the following:

165

(1) The book of minutes, stock book, stock ledger
and records of the corporation of the Essgee Com-
pany of China, Inc.

166 (2) Ledgers, journals, cash books, day books, purchase books, sales books and trial balance books which show correct and actual value of goods, wares and merchandise imported by Essgee Company of China, Inc., from January 1, 1920, to October 14, 1921, from foreign countries, to wit, Germany, France, Italy, Switzerland, China, Japan, England and Holland.

167 (3) All check books, stubs of check books, cancelled checks, pass books and deposit books of said Essgee Company of China, Inc., and also drafts, cancelled drafts, memoranda of drafts, records of payment of drafts and notices of dishonor of protest of unpaid drafts covering period from the 1st day of January, 1915, down to October 14, 1921.

168 (4) Any and all invoices, debit memoranda, receipts, bills and notes of whatever nature covering charges by Continentale Handels Aktiengessellschaft of Berlin, Germany, on account of importations made to the Essgee Company of China, Inc., and covering charges of whatsoever nature with the said Continentale Handels Aktiengessellschaft, and all other letters, reports, bills, invoices, correspondence and writings of whatsoever nature received between the dates of January 1, 1920, and October 14, 1921, from the aforesaid Continentale Handels Aktiengessellschaft or their agents and employees, or from any other person or persons who, during this period shipped, delivered, consigned or sold merchandise to the Essgee Company of China, Inc., from the aforesaid countries of Germany, France, Italy, Switzerland, China, Japan, England and Holland; and all other letter books containing tissue copies or carbon or other copies kept in loose leaf system and bound together containing copies of all letters, bills, reports, invoices and writings of whatsoever nature, written and sent by Essgee

Company of China, Inc., to the firms, individuals and corporations hereinbefore in this paragraph named and designated.

169

(5) The private ledger or ledgers, book or books of Essgee Company of China, Inc., showing the data from which annual, semi-annual, quarterly, monthly or any statements were made by it to the firms, individuals and corporations hereinbefore mentioned.

(6) Any and all other private invoices and other invoices including consular invoices, and all debit memoranda and slips which accompany said private invoices and memoranda and which show a correct and actual value of goods, wares and merchandise and the prices paid and agreed to be paid for said goods, wares and merchandise imported by the Essgee Company of China, Inc., from January 1, 1921, to October 14, 1921, from foreign countries, to wit, Germany, France, Italy, Switzerland, China, Japan, England and Holland.

170

(7) Any and all contracts, agreements, undertakings or copies of contracts, agreements, undertakings between the Essgee Company of China, Inc., and the Continentale Handels Aktiengessellschaft between the 1st day of January, 1918, and October 14, 1921, for the purchase or sale of goods, wares and merchandise imported from foreign countries, by the Essgee Company of China, Inc.

171

(8) Any and all contracts, agreements, writings or undertakings and copies thereof between the Essgee Company of China, Inc., and the Hanclaire Trading Corporation, the Amgar Corporation and the Impex Trading Company of whatsoever kind and nature covering the period between January 1, 1915, down to October 14, 1921.

172 And for failure to attend and produce the aforesaid documents, you will be deemed guilty of a contempt of court and liable to the penalties of the law.

WITNESS, the Hon. Learned Hand, Judge of the United States District Court at the Borough of Manhattan, City of New York, on the 14th day of October, 1921.

ALEX. GILCHRIST, JR.,
Clerk.

William Hayward,
United States Attorney for the
Southern District of New York.

173 (Seal.)

Endorsement.

The President of the United States of America To
Essgee Company of China, Inc., 621 Broadway,
New York, N. Y.

Subpoena *duces tecum.*

Vio. Sec. 3, Par. G, Act of Oct. 3, 1913.

I hereby deputize Edward R. Norwood to serve the within subpoena.

Oct. 14, 1921.

174

THOMAS D. McCARTHY,
U. S. Marshal, S. D. N. Y.

49107

Form No. 302.

I hereby certify, that on the 14 day of Oct., 1921, at the City of New York, in my district, I personally served the within subpoena upon the within-named Essgee Company of China, Inc., 621 Broadway, N.

Y. C., by exhibiting to David Schratter, Pres., at 175
621 B'way, N. Y. C., the within original, and at the
same time leaving with him a copy thereof.

Dated, Oct. 15, 1921.

THOMAS D. McCARTHY,
United States Marshal,
Southern District of New York.

E. R. Norwood
Custom Agt.

Replying Affidavit of David Schratter.

UNITED STATES DISTRICT COURT,

176

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

177

State of New York,
County of New York, ss:

David Schratter, being duly sworn, deposes and says that he is one of the applicants in these special proceedings and has joined with the ESSGEE Company of China and also in the separate proceedings instituted on behalf of deponent and Hanclaire Trading

178 Corporation to compel the United States Attorney to return the books, records, papers and letters taken from deponent and said corporations. The fact is that deponent's personal books, records and papers were taken by the government officials from the office of deponent on October 14th, 1921, and that the said papers are now held by the United States Attorney, in and for the Southern District of New York.

179 Deponent has been told about the affidavits which have been submitted in opposition to the application. Deponent, nevertheless, reiterates the statement in the original petition and in his affidavit and adds positively that at no time did deponent, by word of mouth or by act, authorize or consent to the taking of any books, records or papers belonging to either of said corporations or this deponent by the government officers. The fact is that when the government officers came to the office of said corporations on October 14th, 1921, they did serve a paper which Mr. Kramer told deponent was a subpoena. Deponent knew at the time that Mr. Kramer was a lawyer and for that reason relied upon Mr. Kramer in the matter of the talk with the government officers. Mr. Kramer did most of the talking and pursuant to the mandate of the subpoena, Mr. Kramer did collect a number of papers, books and records belonging to Hanclaire Trading Corporation and packed same into a bundle and with deponent and the government officers, proceeded to the Federal Building. Deponent did not participate in or hold any conversations with respect to any particular invoices or any particular papers, or the location of any particular papers, with the government officers.

180 On October 14th, 1921, when Mr. Kramer left the office, two of the government officers remained be-

hind. What happened during the time when deponent and Mr. Kramer were detained in the Federal Building, is not within deponent's personal knowledge. The facts are stated and set forth in the affidavits of the bookkeeper and Mr. Morris Schratter.

Deponent denies that he ever made a statement to Mr. Williams or any other government officer that he was willing that he or any other government officer should look at the books and records of said corporations or which belonged to deponent. Deponent also denies that he made a statement that he had no objection to the inspection by the government officers of other books, records and papers which were in the place of business of said corporations at the time. There was at said time, on October 14th, 1921, no talk about the files of correspondence of the Han-claire Trading Corporation or the Essgee Company of China, or the Impex Trading Company, and at no time did deponent authorize any government officer or Mr. Williams, or any other person, to look through any of said books, records or papers. Deponent gave at no time on October 14th, 1921, any such instructions as are detailed and set forth in Mr. Williams' affidavit. Deponent reiterates affirmatively that every paper, document, letter, invoice, cable or book which the United States Attorney now has and which originally came from the office of said corporations or of this deponent, were originally taken without the consent of this deponent and without his authority, and without the consent and authority of said corporations. Deponent and Mr. Kramer were the only persons in authority in the business of said corporations. It is absolutely untrue that this deponent and Mr. Kramer were informed before they left for the Federal Building with two of the government officers, that the other two government officers would remain

181

182

183

184 behind for the purpose of examining the books, records and papers of said corporations or which belonged to this deponent. At no time was deponent served with any subpoena or other process calling for his individual books, records or papers. The very first paper which was served was served on Mr. Kramer. That was while deponent was at the office of said corporations. The next paper was so served at the Federal Building and was a warrant for the arrest of this deponent. At the same moment, a like warrant for the arrest of Mr. Kramer was also served. Deponent did not deliver any of the papers of either of said corporations or those which belonged to this deponent, to any Assistant United States Attorney, or anyone in the United States Attorney's office. The fact is that Mr. Kramer had the papers in his personal possession pursuant to the subpoena. He had with him these papers in a bundle which he carried under his arm in the anteroom where the Grand Jury was in session on October 14th, 1921, and gave the same to hold to one of the government officers, after Mr. Kramer was told that this officer wanted to hold them until Mr. Kramer had talked to the Assistant United States Attorney. The facts with regard to this taking are fully set forth in the original papers and deponent, for that reason, does not repeat same herein.

185

186 The invoices to which Mr. Williams and the other government officers make reference in the opposing affidavits, and which they call "private invoices," belong to and were the property of this deponent. At no time were they delivered by deponent to anyone. Deponent never surrendered possession of them. They were seized without process against this deponent and against his objection. Deponent had arranged to sail to Europe on October 15th, 1921, and after he was

taken into custody under the warrant issued against him, he obtained leave of the government officers to continue his passage to Europe. Debonen returned on the 9th of June, 1922, and made the application for the return of said papers at the first opportune moment, and as soon as it was possible to have the papers drawn and prepared. 187

DAVID SCHRATTER.

Sworn to before me, this

10th day of July, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

Commission expires March 30, 1923.

188

N. Y. Co. Clerk's No. 137; Reg. No. 3136

189

190 **Replying Affidavit of Nathaniel H. Kramer.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

191 }
 State of New York,
 City of New York, ss:
 County of New York,

192 }
 Nathaniel H. Kramer, being duly sworn, deposes and says: He is an attorney at law, duly admitted and licensed to practice in all the courts of this state. That he is now engaged in the practice of law at No. 51 Chambers Street, Manhattan Borough, New York City.

During October, 1921, deponent, in addition to the practice of law, devoted himself to mercantile pursuits. He was at that time connected with the Han-claire Trading Corporation, one of the two corporations on whose behalf application is being made to compel the United States Attorney to surrender and return papers, records and letters seized from the possession of said corporations.

193

Deponent well remembers the time when the government officers, including Mr. John M. Williams, came to the office of the said corporations. Deponent takes issue with Mr. Williams and also with the others who are making affidavits in opposition to this application, as to what took place on October 14th, 1921. Deponent is positive that only one subpoena was served and that that subpoena was directed to Hanclaire Trading Corporation. This subpoena was served on deponent and not on Mr. Schratter.

194

The fact is that when Mr. Williams and his associate officers entered the office of the said corporation on October 14, 1921, they asked for papers relating to the entry of certain merchandise by Hanclaire Trading Corporation. Deponent read the subpoena at the time. He, as an attorney, understood the purport and scope of the subpoena and personally collected the papers called for by the subpoena. These papers all related to the Hanclaire Trading Corporation; the Esgee Company of China, was not even considered at the time, and deponent was not in any way interested therewith, and deponent packed the papers so collected into a bundle and with Mr. Schratter and two of the government officers, went in a taxicab to the Federal Building. Deponent had possession of the Hanclaire Trading Corporation papers at the Federal Building and Mr. Schratter did not have any of the papers. Deponent denies that he turned over any papers of the Hanclaire Trading Corporation to the Assistant United States Attorney in charge of the case on October 14th, 1921, or at any other time. In this connection, deponent calls the special attention of the Court to the fact that there is no affidavit from the Assistant United States Attorney who was supposed to have been in charge of this case before the Grand Jury sitting in October,

195

196 1921; that neither the deponent nor Mr. Schratter turned any papers over to him. Important on this point also is the fact that although the subpoena was served October 14th, 1921, and the Grand Jury convened for that month was then in session, the indictments returned against both of the said corporations were not so returned until May, 1922.

197 During all the time when deponent was present and the government officers were in the offices of the Ess-gee Company of China and the Hanclaire Trading Corporation on October 14th, 1921, deponent did not hear Mr. David Schratter consent to the taking of any papers by the government officers. No papers were in fact at the time taken by any government officers while deponent and Mr. Schratter were at the office. Deponent did not consent by word of mouth or act, or otherwise, to the taking of any papers on October 14th, 1921, or at any other time.

Deponent did write a letter dated November 5, 1921, addressed to Mr. Williams, but that letter has, however, nothing to do with these proceedings nor with the transactions or matters included in the indictments which have been returned and filed against the above-named corporations and David Schratter.

NATHANIEL H. KRAMER.

Sworn to before me, this
198 10th day of July, 1922.
Alexander Lewis,
Notary Public,
Queens Co. No. 1620.
N. Y. Co. Clerk's No. 127; Reg. No. 3136.
Commission expires March 30, 1923.

Replying Affidavit of Morris Schratter.

199

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

200

State of New York,
County of New York, ss:

Morris Schratter, being duly sworn, deposes and says that he was, on October 14th, 1921, connected with the Essgee Company of China, and Hanclaire Trading Corporation. Deponent remembers the happenings of October 14th, 1921; that four government officers entered the place of business of said corporations; that deponent was left behind with Miss Karas after Mr. David Schratter and Mr. Kramer left with two of the government officers. At that time Mr. Kramer had a bundle of papers of Hanclaire Trading Corporation under his arm. The two government officers who were left behind searched every book, record, file and paper in the office of said corporations. Deponent did ask, as he has already stated, of said government officers, about their authority.

201

202 They told him that they had a right to do what they were doing. The government officers took with them what they wanted, without asking deponent. Deponent and Miss Karas were the only persons left in the office at the time. Deponent did not consent or authorize the taking of any papers. Deponent did not have any authority to do this. Deponent was only a workingman for said corporations. The two officers who were left behind did take away with them several large bundles of papers, books and records of said corporations and also some which belong to Mr. David Schratter. The records of the corporations and Mr. David Schratter were virtually stripped by the government officials who were left behind after Mr. Kramer and Mr. Schratter had left.

203

MORRIS SCHRATTER.

Sworn to before me, this

10th day of July, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

N. Y. Co. Clerk's No. 127; Reg. No. 3136.

Commission expires March 30, 1923.

Replying Affidavit of Dorothy Karas.

205

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER, to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

206

State of New York,
County of New York, ss:

Dorothy Karas, being duly sworn, deposes and says that on October 14th, 1921, she was the only girl employed by the Esggee Company of China and Hanelaire Trading Corporation. Deponent is the person referred to as the young lady in the affidavit of Mr. Williams, about which deponent has been told.

207

Deponent remembers well the happenings of October 14th, 1921. The entry of four men at one time into the office of said corporations and the tone of the talks at the time, and the taking of papers by Mr. Kramer and packing them into a bundle, all tended to impress upon the mind of deponent the exact facts and circumstances which transpired on October 14th, 1921.

208 Deponent denies that Mr. David Schratter gave her any directions during that morning to give to any person, the government officers, or others, any papers, records, or books. Deponent also denies that Mr. Schratter, on said day, called to deponent for any particular papers or invoices. Mr. Schratter did not tell deponent on that day or at any other time, to show any of the books, records or papers of said corporations to any of the government officers. Deponent well remembers that Mr. Kramer and Mr. Schratter left the office of said corporations with two of the government officers. The other two government officers remained behind and what they did with the books, records and papers which belong to said corporations or Mr. Schratter, is fully set forth in the affidavit which deponent has heretofore made. Deponent repeats that the government officers who remained behind in the office of said corporations, ransacked all the files of said corporations and took away practically all of the books, records and papers which the said corporations had in their business.

209

DOROTHY KARAS.

Sworn to before me, this

10th day of July, 1922.

Alexander Lewis,

Notary Public,

Queens Co. No. 1620.

210 N. Y. Co. Clerk No. 127.

Replying Affidavit of John M. Williams. 211

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

212

County of New York,
Southern District of New York, ss:

John M. Williams, being duly sworn, says:

Deponent reiterates his statement that David Schratter personally told deponent that he could see everything they had. This was said by David Schratter to deponent in Kramer's presence. Deponent never spoke one word to Kramer in the office of the corporation on October 14, 1921.

213

Deponent never saw David Schratter or Kramer before in his life. Deponent never personally met Kramer until he personally came to deponent's office shortly after October 14, 1921, and introduced himself, and commenced telling deponent how unfortunate he had been in becoming involved with such people, and that he did not know anything at all about the

214 details of business of the corporations which were all in Schratter's hands. He further stated that he personally had lost a lot of his own money through his association with Schratter and the Hanclaire Trading Corporation.

Deponent denies that the letter attached to his answering affidavit dated November 5, 1921, from Kramer does not refer to the matters in the case as Kramer states. Deponent never had any other transactions with Kramer, but those connected with the present case. Deponent submits that the letter shows on its face that it refers to the matters under investigation by the Government, which were in this case.

215 Deponent has carefully examined the papers, etc., in the possession of the United States, and now states that all the papers and correspondence taken by deponent and Customs Agent Neustadt were entirely returned to Kramer by deponent at Kramer's own solicitation, on October 19, 1921. Kramer in his letter referred to above, expresses his gratitude for that.

216 Deponent denies that Morris Schratter was in the "outside room" where the books and papers of the Essgee Company and Impex Trading Company were stored. The only person in that room was the girl sent there by Schratter, and the only things examined by deponent and Neustadt were some books that girl selected for deponent and Neustadt. One or two of these books were inspected, but as deponent could not ascertain whether they were the books of the Essgee and Impex Companies, he spent not more than five minutes in that room. Nothing whatever was removed from the room by deponent or Neustadt. Morris Schratter was never in the private office where the subpoenas were served while deponent was there.

217

Deponent denies that there was anyone in the private office of the corporations, at 621 Broadway, where the subpoenas were served, except the customs officers, Schratter and Kramer and that a girl came in when called for by Schratter to help him locate the papers he was looking for. This private office was off the main or outer office of the corporations, and was entered by deponent and his associates by going through the main or outer office. In this outer or main office, as deponent passed through, there was a man and a girl who showed deponent the books in the "outside room," and who showed deponent at Schratter's direction, the correspondence of the Hanclaire Trading Corporation, and the Essgee Company of China.

218

Deponent never asked Schratter for any of his private papers or records. The transactions had by deponent were with Schratter and these covered only the private invoices, purchase journals and foreign correspondence of the corporations. Deponent and Neustadt remained on the premises 621 Broadway, for less than a half hour after Schratter and Kramer departed.

Deponent never indicated to Schratter or Kramer that they would be called as witnesses before the Grand Jury. No request was made by deponent or by anyone in deponent's hearing, upon Schratter and Kramer to come to the Federal Building.

219
JOHN M. WILLIAMS.

Sworn to before me this

18th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

N. Y. Clerk's No. 317; Reg.'s No. 3340.

Commission expires March 30, 1923.

220 **Replying Affidavit of Edward R. Norwood.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

County of New York,
Southern District of New York, ss:

Edward R. Norwood, being duly sworn, says:

That he has read the replying affidavits of the moving parties.

On the occasion of serving the subpoenas on the Hanclaire Corporation and the Essgee Company of China on October 14, 1921, at 621 Broadway, deponent never had any conversation whatever with Morris Schratter or Dorothy Karas, nor did said Karas or Schratter have any conversation whatever with deponent.

The transactions had with David Schratter were had in the private office of the suite of the corporations at 621 Broadway, and covered a period of one-half hour, at the end of which deponent left with

222

Schratter, Kramer and Dow. The entrance to this private office was through an outer office in the same suite, through which deponent and his associates passed to enter the private offices of the corporations. 223

Deponent in passing into the private office had to pass through the outer office in which latter deponent noticed a man and girl. But this man and girl remained in the outer office while deponent and his associates were in the private office with David Schratter and Kramer, who were the only two besides deponent and his brother officers in the private office, which was closed while the transactions enumerated in the answering affidavits were had. The only time Karas was in the private office was when summoned there by David Schratter to bring in the invoices then under discussion. 224

Deponent and his associates were in the offices not longer than a half hour when deponent and Customs Agent Dow left with Schratter and Kramer.

Deponent did not entice or request David Schratter or Kramer to come to the Federal Building, nor in any way indicate to them that they would be called before the Grand Jury or asked to appear as witnesses. Their appearance with the books and papers was entirely unsolicited.

Deponent never served a warrant upon Schratter or Kramer. Upon arrival in the Federal Building Schratter, Kramer, the records and papers and deponent and Customs Agent Dow immediately proceeded to the Grand Jury room where they were met by the Assistant United States Attorney who took the books and records produced. 225

After the records were turned over to the Assistant United States Attorney, deponent and Customs Agent Dow went with Schratter and Kramer, whom depo-

226 nent had informed of the warrant in the hands of the United States Commissioner, to the office of the said Commissioner where they were informed of the precise nature of the complaint against them, waived examination and readily procured bail.

E. R. NORWOOD.

Sworn to before me this
18th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

N. Y. Clerk's No. 317; Reg.'s No. 3340.

227 Commision expires March 30, 1923.

228

Replying Affidavit of Francis A. McGurk. 229

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

230

County of New York,
Southern District of New York, ss:

Francis A. McGurk, being duly sworn, says: That he has read the replying affidavits of the moving parties.

Repling to the affidavit of Kramer, deponent states that at the time the papers and records were produced in the Grand Jury ante room, deponent was in before the Grand Jury. Upon being informed that the records of the Hanclaire and Essgee Companies had arrived, deponent left the Grand Jury, came into the ante room where Schratter, Kramer and Customs Agents Norwood and Dow were present and was informed by the Customs Agent: in the presence of Schratter and Kramer that the records then and there lying on the table had just been produced. There-

231

232 upon deponent took all of the said records, books and papers and brought them in to the Grand Jury, which then and there impounded them in this case.

Subsequently deponent was present upon the arraignment of defendants who both waived examination before the United States Commissioner and readily procured bail.

Deponent at no time had any conversation with David Schratter in connection with this case. Said Schratter was never in deponent's office. Said Kramer on October 14, 1921, was not in deponent's office. He came there frequently thereafter seeking to appear before the Grand Jury.

233 Deponent has within the past week, examined the records of the Essgee Company of China in the office of the County Clerk of New York County and finds that there are two unanimous consents of the stockholders of that company on file there, one dated May 12, 1917, and the other dated November 28, 1917, filed March 1, 1918. Both consented to increases to capital stock of the Essgee Company of China. In the first, Kramer is the attorney who prepared it and the notary who took the acknowledgment. In the second, he is the attorney who prepared it and signed it as secretary of the Essgee Company of China, and further, he signs in the last document as being the owner of 50 shares of stock, being half of the stock outstanding at the time of the second unanimous consent to increase the capitalization. Deponent distinctly recalls said Kramer telling deponent subsequent to October 14, 1921, that he was then an officer of the Essgee Company of China, but that said company was virtually dormant, and that its affairs were taken over by the Hanclaire Trading Corporation. He further stated that the Essgee Company had not been dis-

234

solved. This fact is in direct contradiction of 235 Kramer's statement in the moving papers that he was not an officer of the Essgee Company on October 14, 1921, but an employee thereof.

There are now in the Government's possession, exclusive of the records and papers volunteered by Kramer, the following produced in response to the two subpoenas:

Minute book of the Hanclaire Trading Co.
Stock certificate book of the Hanclaire Trading Co.
Combined stock and stock ledger of the Hanclaire Trading Co.

Two ledgers. 236
One import sales book.
One import book giving a list of importation returns.
One combined sales export and return export book.
One combined purchase journal and purchase return book.
One purchase journal.

The following invoices all covering merchandise shipped by Continentale Handels Atkiengesellschaft, Berlin, Germany, to:

Impex Trading Company, covering the period April, May and June, 1921.

237
Essgee Company of China covering period September, 1920, and January, February, March and April, 1921.

Amjar Corporation, covering period October, November, and December, 1920.

A sheaf of Marconigrams, coded, from Berlin, Germany, addressed to Amjar Corporation during October, November and December, 1920.

Drafts drawn by Continentale Handels Atkienges-

238 sellschaft, Berlin, Germany, against Impex Trading Company during May, 1921; against Essgee Company of China, during February, March and April, 1921.

Memo of agreement between Mercier, of Montreal and Hanclaire Trading Company, covering *inter alia*, the fixing of prices of merchandise, dated October 6, 1921. Mercier is the Hanclaire's Canadian representative.

Letter from Mercier to Kramer dated October 7, 1921.

Letter from Capporni & Co., Ltd., Montreal, to Kramer, dated September 29, 1921.

Personal tax assessment for Morris Schratter and 239 David Schratter by City of New York, for year 1922.

Quadruplicate consular invoices of Essgee Company of China and Impex Trading Company covering February, March, April, May and June, 1921.

These comprise all, and the only papers, records, books, etc., produced in obedience to the subpoenas.

FRANCIS A. McGURK.

Sworn to before me this

18th day of July, 1922.

Carl Brecher,

Notary Public,

Kings County.

Clerk's No. 496; Register's No. 3178.

240 N. Y. Clerk's No. 317; Reg.'s No. 3340.

Commission expires March 30, 1923.

Further Affidavit of Nathaniel H. Kramer.

241

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

242

City and County of New York, ss:

Nathaniel H. Kramer, being duly sworn, deposes and says:

He has read the further affidavits submitted in this proceeding on behalf of the Government verified July 18th, 1922. Deponent notes the statement which Mr. Williams now makes that he, Mr. Williams carefully examined the papers, etc., now in the possession of the United States, and that all the papers and correspondence taken by Mr. Williams and Customs Agent Neustadt were all returned to this deponent on October 19th, 1921. The papers, etc., referred to by Mr. Williams and Mr. Neustadt as having been returned to deponent are the papers, which according to Mr. Williams were taken by him and Mr. Neustadt in the absence of deponent and Mr. Schratter from the office, and while deponent and Mr. Schratter were at the Federal building in obedience to a subpoena which

243

244 had been served, and also while deponent and Mr. Schratter were detained under the warrant of arrest, pending the giving of bail. None of the papers which deponent received on October 19, 1921, from the Government officials included any of the papers or records which deponent and Mr. Schratter took pursuant to the subpoena to the Federal building on October 14, 1921.

245 Deponent has also read the statement made by Customs Agent Norwood in his affidavit verified July 18th, 1921, that the appearance of deponent and Mr. Schratter with the books and papers was entirely unsolicited. In this statement Mr. Norwood is mistaken, because the fact is that on October 14th, 1921, according to the Government's contention two subpoenas *duces tecum* were served commanding Essgee Company of China and Hanclaire Trading Corporation to appear forthwith with their books, records and papers before the Grand Jury. The appearance with the books and papers was pursuant to the mandate of the subpoena, and was not unsolicited.

246 Deponent calls the Court's special attention to Mr. Norwood's statement in the same affidavit that when deponent arrived at the Federal building the entire party proceeded to the Grand Jury room, where they were met by the Assistant United States Attorney, who took the books, and records produced. The books and records so produced were produced pursuant to the order and direction of the subpoena. The United States Attorney took the books, records and papers. These books, records and papers were never surrendered by deponent.

Deponent has also read the affidavit of Assistant United States Attorney, and his statement corroborates fully that the books, records and papers were not voluntarily surrendered, but were taken by the United States Attorney. The fact remains that the

books, records and papers which the Government now holds were not surrendered. They were seized after their production was ordered pursuant to a subpoena. No opportunity was ever given to deponent or to Mr. Schratter to challenge the subpoena or to challenge the taking of the books, records and papers.

Neither deponent or Mr. Schratter was called as a witness pursuant to the subpoena. The books, records and papers which the Government now concededly has were the papers gotten into the Government building upon the statement that they were called for by the subpoena, and as soon as they were brought to the Federal building, the United States Attorney took them without consultation and without the consent of either the Essgee Company of China or the Hanclaire Trading Corporation, David Schratter or this deponent.

The Assistant United States Attorney makes reference to papers in the Government's possession volunteered by this deponent. The only papers which deponent volunteered were papers which deponent produced before the Grand Jury when he testified voluntarily before that body in May, 1922. Those papers consisted of certificates for shares of capital stock of Essgee Company of China, unpaid drafts which belonged to deponent, and also papers which corroborated deponent's contention that deponent was a creditor of David Schratter and Hanclaire Trading Corporation. None of the papers consisted of the records, books, account books, invoices, cables and other papers which are enumerated by the United States Attorney as in his possession, were volunteered by deponent.

NATHANIEL H. KRAMER.

Sworn to before me this

22nd day of July, 1922.

Norman Handel,

Com. of Deeds,

N. Y. Co. #167.

250

Further Affidavit of David Schratter.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

251 The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

City and County of New York, ss:

David Schratter, being duly sworn, deposes and says that he is one of the applicants in this proceeding.

252 He has been told about the further additional affidavits which have been submitted by the Government, all of them verified July 18th, 1922. Depo-
nent has read those affidavits, and now submits to the Court that there is really no issue or substantial difference of fact between the Government and de-
ponent and the two corporations all of the parties to the application in this and the accompanying proceeding as to the taking of the books, records and papers which the Government admits it now has.

Heretofore the books, records and papers were di-
vided under three classifications:

“1. The books, records and papers which were taken from deponent and Mr. Kramer while they were in the Federal building. 253

“2. The books, records and papers which Mr. Williams and Mr. Neustadt took from the office of Essgee Company of China and Hanclaire Trading Corporation, while deponent and Mr. Kramer were absent from the office.

“3. The books, records and papers belonging to deponent individually taken from the office by Mr. Williams and Mr. Neustadt.”

Accepting for the moment at full face value, the statements submitted by the Government agents, deponent finds that the papers enumerated above under classification “2” must be eliminated. This elimination is forced by the fact that Mr. Williams in his last affidavit verified July 18th, 1922, swears that he has carefully examined the papers, etc., in the possession of the United States and states that all the papers and correspondence which he and Mr. Neustadt took, were returned to Kramer on October 19, 1922. 254

If Mr. Williams’ statement is true that all the papers and correspondence and records which he and Mr. Neustadt took while deponent and Kramer were detained in the Federal building, then the papers which the Government admits it has, cannot include the papers taken by Mr. Williams and Mr. Neustadt. Mr. Williams’ statement by its own force, if true, eliminates also the papers included in classification “3” above mentioned. All of the papers, records and books which the Government admits it has, must therefore have been included in the papers, books and records which Kramer brought to the Federal building, pursuant to the command of the subpoena which was served. 255

256 As to the books, records and papers, taken by those parties, pursuant to the direction of the subpoena, Mr. Norwood, one of the Government agents swears that the appearance of deponent and Kramer with the books and papers was entirely unsolicited. Deponent is at a loss to understand how Mr. Norwood can claim that the visit to the Federal building was unsolicited when the fact is that the Government claims that two subpoenas *duces tecum* were served. Those subpoenas according to the Government's contention directed the appearance of Hanclaire Trading Corporation and Essgee Company of China forthwith before the Grand Jury with their books, records and papers. The appearance with the books, records and papers on October 14, 1921, was in fact in obedience to the command of the subpoena which was served and was not unsolicited.

257 Mr. Norwood also stated that upon arrival in the building, deponent and Kramer with the records and papers and Mr. Norwood and Mr. Dow, proceeded to the Grand Jury room where they were met by the Assistant United States Attorney, who took the books and records produced.

258 The Assistant United States Attorney sets forth his version of what occurred with regard to the papers, records and books which deponent and Kramer produced pursuant to the subpoena. He states that at the time the papers and records were produced in the Grand Jury ante room, he was before the Grand Jury. He was told that the records of the Hanclaire Trading Corporation had arrived, and also that the papers of the Essgee Company of China had arrived. He left the Grand Jury room and came into the ante room. He was informed by the customs agents that the records lying on the table had been produced. Mr. McGurk adds that "thereupon deponent took all of

the said records, books and papers and brought them in to the Grand Jury, which then and there impounded them in this case." 259

The Assistant United States Attorney according to his own statement was informed by the customs agent that the records were lying on the table in the ante room, adjoining the room where the Grand Jury was in session. The Assistant United States Attorney asked no questions. He did not ask deponent's permission nor Mr. Kramer's to take the papers and he says that Grand Jury impounded them.

Deponent has been advised that this taking in and of itself, even under the circumstances set forth in the papers submitted for the Government, constitute 260

an unreasonable search and seizure of the books, records and papers involved in this proceeding. There is no denial anywhere, even in this last batch of affidavits submitted for the Government that Mr. Kramer made a demand for the return of the books, records and papers from the customs agents with whom he left them while he went to attend on the arraignment under the warrant for his arrest. Mr. Kramer did make the demand on October 14, 1921, for the return of the papers and was told that he could not have them. Irrespective of what transpired in the office of the Essgee Company of China when the four customs agents were present: irrespective also 261 of what happened when two of the customs agents remained in the office of Essgee Company of China, after deponent and Mr. Kramer went to the Federal Building, the facts admitted by the Government establish that the papers which Mr. Williams and Mr. Neustadt took from the office of the corporations involved in these proceedings, were returned. The papers which the Government now has are therefore, the papers which deponent and Mr. Kramer produced

262 pursuant to the command of the subpoena duly served.

Neither deponent nor Mr. Kramer were called pursuant to the subpoena; neither deponent nor Mr. Kramer was given an opportunity to produce the books before the Grand Jury; neither deponent nor Mr. Kramer was given an opportunity to assert any right or perogative which they have in law with respect to their books, records and papers. As soon as the books, records and papers which the Government now has were brought into the Federal building, they were placed upon a table in the room near the room where the Grand Jury was in session, and the Assistant United States Attorney, took all of them. He so took them with him into the Grand Jury. The Grand Jury impounded them according to the Government's contention, and this taking, is, deponent repeats, against the violation of the guarantee against unreasonable search and seizure extended to deponent and to the Essgee Company of China and the Hanclaire Trading Corporation by the Constitution of the United States.

DAVID SCHRATTER.

Sworn to before me this

20th day of July, 1922.

E. J. Sichel,

Com. of Deeds,

N. Y. Co. #273.

264

Opinion and Decision by J. Knox.

265

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

ESSGEE COMPANY OF CHINA, Inc.,
 and DAVID SCHRATTER to com-
 pel the United States Attorney
 for the Southern District of
 New York, to return certain
 books, papers, records, etc.

266

Louis S. Posner, attorney for petitioners (Hon. Wm. M. K. Olcott, Abra. A. Silberberg of counsel).

William Hayward, United States Attorney, for the Government (Francis A. McGurk, Assistant United States Attorney, of counsel).

KNOX, D. J.:

That the papers of a corporation, as well as those of an individual, are immune from unlawful searches and seizures, is a proposition established beyond cavil; and, it is also one which this Court has no wish to impair. Such papers, are, however, subject to production in a proper case by writ of subpoena, *Hale v. Henkel*, 201 U. S. 43.

267

Upon this proceeding, the record shows that two subpoenas, one addressed to Hanclaire Trading Corporation, and the other to Essgee Company of China, Inc., each calling for the production of certain books,

268 and papers before the Grand Jury, were served upon David Schratter, as president of both corporations, at the office where the said concerns carried on business, upon October 15, 1921.

In response to the subpoenas, or at least to one of them, certain papers were gathered together by one Kramer, vice president of the Hanclaire Trading Company, in the presence of Schratter, and were taken by Kramer, accompanied by Schratter and two Government officials, to the anteroom of the Grand Jury, which was then in session in the Federal Court House, in this district.

269 Arriving there, neither Kramer nor Schratter was invited before the Grand Jury; the papers were deposited upon a table in the anteroom; or, at the request of one of the aforesaid officials, were left in his custody. At about this time, the Assistant United States Attorney, in charge of this prosecution, emerged from the Grand Jury room, and taking the papers into his possession, carried them before the Grand Jury, where some of them were ordered impounded.

270 Meanwhile, Kramer and Schratter were directed to go to another part of the Federal building, and, having done so, were informed that warrants had been issued for their arrest for alleged offenses against the Customs' laws. The two men were subsequently arraigned before United States Commissioner Hitchcock, where they waived examination and were admitted to bail.

The only possible infraction of petitioners' rights that I can see which arose from the Government having acquired possession of the papers in the manner described is that Kramer and Schratter, by not being called before the Grand Jury, were thus deprived of

the opportunity of showing under oath the reasons, if such they had, why they should not be compelled to produce the documents mentioned in the subpoenas. *Wilson v. United States*, 221 U. S. 361.

271

But this all happened eight months ago. This Court was then open, and has been open throughout the intervening period. Notwithstanding this fact, and notwithstanding the further circumstance that Schratter, immediately following his arrest, appeared before me to request permission to go to Europe, no showing was made, nor indeed, is it now made, that the corporations mentioned were not obliged to produce before the Grand Jury each and every paper and document called for in their respective subpoenas. In addition, the indictment against petitioners, and which, presumably, is founded, in part at least, upon the papers in question, was not returned until the May, 1922, Term of this court. There was, therefore, ample time for petitioners to have sought relief before any real prejudice came to them.

272

It is suggested that Schratter was in Europe until June of this year, and that, accordingly, he was in no position to assert the alleged rights of himself, or his corporations. The answer, I think, is that so far as the Government is concerned there was no call for him to go to Europe, or having been permitted to go, to remain away so long. Indeed, the Government opposed Schratter's application to leave this country, and I afforded him the privilege he sought only after his earnest solicitation, and that of one of his present attorneys. Having gone away for business reasons of his own, he has no reason to expect that, during his absence, the prosecuting officials would not proceed with the investigation and presentation of his alleged offenses before the Grand Jury. To permit him now to come into Court, and

273

274 without prejudice, plead that his rights have been invaded, might, and probably would, seriously affect, and prejudice the Government.

Kramer was the attorney for the two corporations. He was an officer of one of them, and I think, a stockholder of both, and intimately concerned therewith. He requested permission to appear before the Grand Jury as a witness, in order to exculpate himself from any wrongdoing charged against him. The privilege being granted, Kramer, in the course of his testimony, voluntarily produced certain papers and documents which, the record indicates, had an important bearing upon this prosecution. At any rate Kramer was not indicted, and the petitioners were.

275 When the papers first referred to were taken to the Grand Jury anteroom, Kramer was their custodian; and their selection from the files of the corporation had been committed to him by Schratter. Being attorney for the companies and an officer of one of them, Kramer, had there been legal ground for the non-production of the papers, was then, and ever since has been, in a position to say so. He never asked to go before the Grand Jury for any such purpose, although, I do not doubt he had authority so to do had he cared to exercise it. Nevertheless, it was not until June 28, 1922, when he made an affidavit in support of this motion, that he took any really affirmative action, designed to protect what he now conceives to be a gross invasion of petitioners' constitutional rights.

From what has been said, I am unable to conclude that there was an unlawful seizure of such of the papers of the corporation as were produced by Kramer at the Grand Jury anteroom; and if, by any line of reasoning such may properly be said to have been the fact, I am satisfied that both Kramer and

Schratter, by their respective course of inaction, have unequivocally waived any rights they or any of petitioners may have had to a return of such papers. 277

Complaint is made that before being asked to produce papers of the corporation Kramer and Schratter should have been informed that their arrest was imminent—it is said that the failure of the Government to furnish such information was unfair and prejudicial to petitioners. In my judgment, there is no obligation upon the Government to wave a red flag in the face of prospective defendants. Offenders against the law ordinarily do not inform officers of the law as to when and where a crime will be committed, and by the same token, it is no part of the duty of enforcing the law to give advance notice of intended arrest. Furthermore, I apprehend that such a course of procedure would, if carried out, in connection with the service of a subpoena *duces tecum*, be destructive of strict obedience to the commands of the writ, particularly, if it called for incriminating documents. 278

There is another group of papers and part of the subject-matter of this motion, which is said to have been taken from defendants' office by two Government officials who remained there after Kramer and Schratter, accompanied by two other officials, had departed for the Federal building. The facts with reference to any such papers are in serious dispute between the officials in question and two employees of the corporation, which latter are supported in part, by the affidavits of Kramer and Schratter. Much capital is sought to be made out of the incident, that four Government officials went to petitioners' office at the time of the service of the subpoenas. It is argued that therefrom I should find 279

280 evidences that a "raid" was in contemplation by the officers; and that I should accept at its face value the more or less circumstantial account of petitioners' employees as to what took place. In reply to this, it is to be observed that what transpires upon an occasion such as the call that was made at the offices of the corporations, very often has an important bearing upon subsequent events; that the witnesses are ordinarily vitally interested in all that goes on, or are employees of persons who are; and that, if the Government has only a single witness to what occurs, he is most likely to be "outsworn" upon the trial. A more or less settled custom has, in consequence, arisen (and properly, I think), that the Government will have upon the scene of a particular event, a number of persons who at the appropriate time can give their version of the same. The Government, as well as a defendant, is entitled to rightfully acquired knowledge, of things said and things done in the course of the proper service of lawful process —not only this, but the Government, as well as a defendant, is entitled to the means of proving that knowledge.

281 In the present instance, two of the officials in question, viz, Messrs. Williams and Norwood, happen to be known to the Court as men who have spent many long and honorable years in the Government service. And when officers of vast experience, and known probity, give testimony as to the happenings upon an occasion wherein they were participants, that testimony is entitled to most serious and respectful consideration. And so here, I am disposed to give credence to the affidavits of these officers in preference to those submitted in opposition thereto. The substance and detail of what the officers say is not, in my opinion, improbable. Upon the

occasion to which the various deponents refer, Kramer and Schratter were doubtless desirous of currying favor with the Government agents, and, under such circumstances, prospective defendants frequently do things they would not do upon more mature consideration. I will, therefore, deny the request to return the group of papers, if any still remain in the hands of the Government, which are said to have been removed by Williams and his associate. The question of this alleged illegal seizure will doubtless arise upon the trial, and any question of fact as between the officials and the petitioners will probably resolve itself into such shape that it may be passed upon by the jury. If my confidence in the depositions just referred to has by any chance been misplaced, the error can then be corrected.

As to the papers produced before the Grand Jury by Kramer at the time he voluntarily appeared before that body, there is no merit in petitioners' application.

The petition will be denied.

August 24, 1922.

JNO. C. KNOX,
U. S. D. J.

283

284

285

Stipulation.

UNITED STATES DISTRICT COURT,
 SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

287

The undersigned stipulate and agree that the record to be presented to the Supreme Court of the United States on the appeal and writ of error allowed herein, shall consist of the following papers, viz:

1. Petition of Essgee Company of China, verified June 27th, 1922.
2. Order to show cause in these proceedings based upon the said petition dated June 27th, 1922.
- 288 3. The affidavits of David Schratter, Nathaniel H. Kramer, Dorothy Karas and Morris Schratter, all verified June 27th, 1922.
4. The affidavits of David Schratter, verified respectively July 10th, 1922, and July 20th, 1922.
5. The affidavits of Nathaniel H. Kramer, verified respectively July 10th, 1922, and July 22nd, 1922.

6. The affidavits of Morris Schratter and Dorothy Karas, verified July 10th, 1922. 289

7. The affidavits of John M. Williams, verified respectively July 7th, 1922, and July 18th, 1922.

8. The affidavits of Edward R. Norwood, verified respectively July 7th, 1922, and July 18th, 1922.

9. The affidavits of Francis A. McGurk, verified respectively July 10th, 1922, and July 18th, 1922.

10. The affidavit of Frank Dow, verified July 7th, 1922. .

11. Subpoena *duces tecum* directed to Essgee Company of China, endorsements thereon and Marshal's return thereto. 290

12. The opinion and decision written and rendered by Hon. John C. Knox, District Judge.

13. The order dated September 12th, 1922, signed by Hon. John C. Knox, District Judge.

14. The memorandum endorsed upon the order of September 12th, 1922, signed by Hon. John C. Knox, District Judge.

15. Assignment of errors.

16. Petition for writ of error and its allowance. 291

17. Writ of error.

18. Petition to appeal and its allowance.

19. Citation.

Dated, New York, September 18th, 1922.

A. A. SILBERBERG,
Attorney for Essgee Company of
China and David Schratter.
WILLIAM HAYWARD,
United States Attorney.

292

Stipulation on Appeal Record.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the
 293 United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, November 14, 1922.

ABR. A. SILBERBERG.

Attorney for Petitioners.

WILLIAM HAYWARD,

U. S. Attorney.

294

Clerk's Certificate.

295

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

United States of America,
Southern District of New York, ss:IN THE MATTER
of

The Application of ESSGEE COMPANY OF CHINA and DAVID SCHRATTER to compel the United States Attorney for the Southern District of New York, to return all books, papers, records, etc.

296

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

297

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York this 14 ~~22~~ day of November, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-second.

ALEXANDER GILCHRIST.

Clerk.